

# The Senate of The State of Texas



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SUBCOMMITTEE ON CONGRESSIONAL DISTRICTS

RQ-159

August 7, 1991

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

RECEIVED  
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Opinion Committee

Dear General Morales:

Please review and consider the enclosed information provided to us by the Honorable Reymundo Gonzalez, Councilman, City of La Grulla, and render an opinion on whether court partitions on minerals are constitutional.

Thank you for attention to this matter. Please feel free to contact me or my staff if we can provide additional information or be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sims".

Bill Sims

BS/sw

cc: Senator Judith Zaffirini

Enclosure: Information on court partitions on minerals.

Prior to 1886, it was customary that the land grant heirs would not sell the minerals because they belonged to Texas under Mexican Civil law (Art. 7, Sec. 20 and Art 13, Sec 3, Const. 1845 and 1861) so as the State relinquished the minerals in 1866 (Art. 7 Sec. 39) the same custom continued.

In 1840, the Republic of Texas adopted English Common Law pursuant to Art. IV, Sec 13, of the Texas Constitution of 1836; in all criminal cases the Common law shall be the rule of decision, not civil matters. In fact, the 1932 court decision (Manry V. Robinson, 122 Tex 213, 231, 56 S.W. 2d 438, 447) went on to state that in view of the tremendous number of land grants made in Texas while the civil law was in force, it could not have been intended to adopt any common law rule on this question even as to grants made after 1840.

It would be rather late to try to circumvent Mexican civil law in view of the following rulings: State V. Sais, 47 Texas 307 (1877) State V. Balli, 144 Tex 195, 190 S.W. 2d 71 (1944) Cert. denied, 328 U.S. 852 (1946); Kenedy Pasture Co. V. State, 111 Tex 200, 231 S.W. 683 (1921); State V. Gallardo, 106 Tex 274, 166 S.W. 373 (1914); Haynes V. State, 100 Texas 426, 100 S.W. 912 (1907); Texas-Mexican Ry V. Locke 74 Tex 370 12 S.W. 80 (1889); Manry V. Robinson 122 Tex 213 56 SWR (2d) 438 (1932); Miller V. Letzerich 121 Tex 248 49 SWR (2d) 404 (1932) etc.

The State vested property rights upon the land grant heirs starting with the relinquishment act of 1852 and then later shifted to the district courts by legislation adopted in 1861, 1866, 1870, 1881, 1901.

The adoption of Art. 14 Sec 7 of our present constitution came about as a result of Art. 7 Sec 39 of the Constitution of 1866. In 1969 Art. 14 Sec 7 was done away. However, Art. 16 Sec. 18 of our present constitution read as follows: The rights of property and of action, which have been acquired under the constitution and laws of the Republic and State, shall not be divested.